

# **Attachment A**

## **(Part 5 of 6)**

## Exhibit 14

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1 UNITED STATES DISTRICT COURT  
1 SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 KATHLEEN ASHTON, et al.,

4 Plaintiffs,

5 v.

03 MD 1570 (RCC)

6 EGYPTIAN ISLAMIC JIHAD, et  
6 al.,

7 Defendants.

8 -----x

9 New York, N.Y.  
9 October 12, 2004  
10 10:00 a.m.

11 Before:

12 HON. RICHARD CONWAY CASEY,

13 District Judge

14 APPEARANCES

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1 (Case called)  
2 (In open court)  
3 THE COURT: Good morning, please be seated.  
4 THE DEPUTY CLERK: Your Honor, now before the Court  
5 this morning, In re Terrorist Attacks on September 11, 2001.  
6 THE COURT: All right. Now this morning, the two  
7 counsel, I believe, have been designated by the defendants to  
8 carry the ball on the main argument. Is that correct?  
9 MR. COOPER: Casey Cooper, on behalf of Saudi Arabia's  
10 defense minister. That is correct, your Honor. I've been  
11 tasked with being lead-off this morning.  
12 Mr. Cohen, on behalf of Prince Mohamad al-Faisal  
13 al-Saud, will follow to discuss the plaintiffs' theory of  
14 conspiracy jurisdiction and the specific allegations of  
15 jurisdiction against his client. And thereafter, I believe,  
16 five separate defense counsel will address the specific  
17 jurisdictional allegations against their respective clients.  
18 THE COURT: All right. Now, I take it you've worked  
19 it out, there will be an hour and a half on each side, and I've  
20 directed my law clerk to inform you, either stage setters or  
21 introductory arguments, we'll stick to that time limit. We'll  
22 see how it goes. We'll allow some time. I think, if you stick  
23 to your time limits, we're going to try and ask Mr. Brantley to  
24 keep you to that, then we'll allow a half hour for rebuttal.  
25 Mr. Cooper.

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1 MR. COOPER: Very well, your Honor. I will try my  
2 best to adhere.

3 THE COURT: Lead off. You're at the plate.

4 MR. COOPER: Your Honor, I'd like to address three  
5 points this morning:

6 First, plaintiff's failure to state or to allege any  
7 traditional minimum contacts between Prince Sultan and the  
8 United States that would give rise to general jurisdiction in  
9 this Court. Second, plaintiffs' alternative theory of personal  
10 jurisdiction, which is, under the Burger King and Calder v.  
11 Jones cases in the Supreme Court, that he and scores of other  
12 defendants somehow intentionally targeted the United States  
13 with terrorism. And, third, I would like to briefly discuss  
14 jurisdictional discovery.

15 THE COURT: Mr. Cooper, get a little closer to the  
16 microphone.

17 MR. COOPER: Your Honor, the plaintiffs have alleged  
18 that Prince Sultan aided and abetted the 9/11 attacks by making  
19 charitable contributions to four Islamic charities which are,  
20 none of which are designated as foreign terrorist organizations  
21 by the United States either then or now. Before Judge  
22 Robertson in the Burnett action, we submitted evidence in the  
23 form of declarations and business records, demonstrating that  
24 those charitable contributions were made to two charities, the  
25 International Islamic Relief Organization and the World

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1 Assembly for Muslim Youth, and that those donations were made  
2 by Prince Sultan in his official capacity. They were grants of  
3 government funds issued from government bank accounts.

4 Plaintiffs raised a factual challenge to our  
5 submission alleging that those two contributions were in fact  
6 personal. Judge Robertson declined to resolve that factual  
7 dispute and instead ruled in the alternative, as the Court  
8 knows. He ruled that if those contributions were official,  
9 Prince Sultan's actions were clearly covered by sovereign  
10 immunity. If, on the other hand, they were personal, the Court  
11 lacked personal jurisdiction over his actions.

12 The two grounds for Judge Robertson's rulings on  
13 personal jurisdiction were, one, no minimum contacts were  
14 alleged, or virtually no minimum contacts were alleged; and,  
15 two, the plaintiffs, in Judge Robertson's words, stopped well  
16 short of alleging that Prince Sultan expressly aimed his  
17 activities towards the forum.

18 Your Honor, the law of the facts remains the same. We  
19 would urge your Honor to adopt Judge Robertson's reasoning and  
20 his findings.

21 Let me speak briefly, your Honor, on minimum contacts,  
22 which, of course, is the starting point on any analysis of  
23 personal jurisdiction. I would be brief because the plaintiffs  
24 have alleged virtually none. The only allegation of  
25 traditional minimum contacts found in any of the complaints is

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1 that Prince Sultan is the chairman of Saudi Air Lines, which  
2 does business in the United States. We do not dispute that  
3 allegation. In fact, he's the ex officio chairman. But be  
4 that as it may, that allegation is clearly not sufficient to  
5 establish jurisdiction over him or to entitle the plaintiffs to  
6 discovery as to any other traditional contacts that may or may  
7 not exist.

8 The plaintiffs really make a different argument here.  
9 They rely on the Burger King case in the Supreme Court and  
10 Calder v. Jones to argue that Prince Sultan and scores of other  
11 defendants expressly aimed his conduct towards the United  
12 States. Now, that is the core issue of this discussion, your  
13 Honor. What does it mean to expressly aim or to intentionally  
14 target one's conduct towards the forum? Without belaboring the  
15 facts of Burger King and Calder and recent cases in the Second  
16 Circuit and the Southern District, interpreting them, namely,  
17 In re Magnetic Audiotape and the Time, Inc. v. Simpson cases  
18 which are cited in our briefs, those cases say four things  
19 regarding what it means to expressly aim one's conduct at the  
20 forum.

21 The defendant must be a primary participant in the  
22 wrongdoing that gave rise to the plaintiffs' actions. Exact  
23 language for Calder. He or she must be personally intimately  
24 involved in that wrongdoing. Its own conduct as opposed to the  
25 conduct of third parties must be intentionally targeted towards

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1 the forum. And, finally, foreseeability of causing injury in  
2 the forum is insufficient to satisfy the test for jurisdiction  
3 under those cases.

4 Your Honor, none of those requirements are met here.  
5 And let me be more specific. I suspect that Mr. Motley and  
6 Mr. Carter will stand up today and recount for the Court all of  
7 the so-called evidence that they have put into the record in an  
8 effort to establish personal jurisdiction over Prince Sultan  
9 and many other defendants. They will claim that various  
10 charities, regardless of whether Prince Sultan actually donated  
11 to them or not, diverted money to Al Qaeda. They will claim  
12 that Prince Sultan was in a position to know about these  
13 diversions of funds. And they will argue that everyone knew  
14 that Al Qaeda was targeting the United States.

15 Your Honor, we have serious quarrels with the  
16 plaintiffs' evidence. Mr. Jeffress noted some of those  
17 disagreements last month. Others are noted in our briefs, but  
18 even if every stitch of the plaintiffs' evidence with respect  
19 to Prince Sultan is true, that doesn't get him to personal  
20 jurisdiction because none of that evidence shows when in 1987,  
21 14 years prior to the September 11 attacks, Prince Sultan first  
22 authorized a government grant to the IIRO that he meant to  
23 attack the United States, that he meant to cause harm to  
24 American citizens. And that is what Calder, Burger King,  
25 Magnetic Audiotape and Time, Inc. v. Simpson stand for. In

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1 fact, the record is exactly the opposite. It shows no  
2 animosity on behalf of Prince Sultan towards the United States,  
3 let alone that he meant America any harm.

4 Prince Sultan is in his 80s. He has served as  
5 minister of defense for the Kingdom of Saudi Arabia for over 40  
6 years. He has spent his entire career devoted to strengthening  
7 U.S.-Saudi relations and building a strategic relationship  
8 that's among America's strongest in the entire Middle East.

9 And, your Honor, for those efforts, what did that get  
10 him? It got him named in Osama Bin Laden's 1996 fatwa, singled  
11 out as a traitor who implemented the policy of America in order  
12 to bleed financial and human resources of the nation. This is  
13 a man whose government stripped Osama Bin Laden of his  
14 citizenship in 1994, some four years before Al Qaeda was  
15 designated as a terrorist organization in the United States.  
16 They froze his assets and tried to extradite him. And, of  
17 course, the 9/11 Commission found that neither the Kingdom of  
18 Saudi Arabia nor any of its officials funded Al Qaeda.

19 In sum, none of the plaintiffs' so-called evidence  
20 establishes that Prince Sultan, through his actions, meant to  
21 attack the United States. And when the rubber hits the road,  
22 your Honor, that's exactly what they need to allege and come  
23 forward with evidence to show under Burger King and Calder.

24 Let me take one moment to address a line of cases that  
25 the plaintiffs rely on as somewhat of an alternative to Burger

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1 King and Calder to establish jurisdiction; namely, a number of  
2 cases where courts have exercised personal jurisdiction over  
3 states, designated state sponsors of terrorism, cases against  
4 Iran, against Libya, against Iraq, alleging direct sponsorship  
5 of specific terrorist activities.

6 Those cases are inapposite here. Personal  
7 jurisdiction was conferred in those cases by operation of that  
8 specific exception, which, of course, is not at issue here  
9 because Saudi Arabia has not been designated a terrorist  
10 sponsor. Judge Robertson rejected that argument in Burnett and  
11 recently in a 2001 case from the District of Rhode Island which  
12 the plaintiffs do not cite in their papers, if I'm not  
13 mistaken, Ungar v. Palestinian Authority case. The Court  
14 specifically distinguished this line of cases that the  
15 plaintiffs are relying on here, in a case brought under the  
16 same statute that's at issue here, 18 U.S.C. Section 2333. The  
17 Court there held that minimum contacts analysis applies and  
18 dismissed complaints filed by Yasser Arafat and other senior  
19 Palestinian officials based on lack of jurisdiction.

20 Finally, your Honor, jurisdictional discovery, the key  
21 case in the Second Circuit is the Jazini case, which stands for  
22 the simple proposition that the plaintiffs need to make out a  
23 prima facie case of personal jurisdiction in order to be  
24 entitled to discovery. What does that mean? It means specific  
25 factual allegations which, if true, are legally sufficient to

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1 establish jurisdiction, not conclusions, not restatements of  
2 the law.

3 They have not met that standard. They haven't alleged  
4 minimum contacts. They've not alleged any personal  
5 participation, primary involvement, in the 9/11 attacks or any  
6 attacks against America. And that's exactly what they have to  
7 do. They've had two years to do it, they've failed to do it,  
8 and they're not entitled to discovery.

9 Your Honor, unless there are any questions, I will  
10 leave it at that and turn the mic over to Mr. Cohen.

11 THE COURT: All right.

12 MR. COHEN: Your Honor, I'm Louis Cohen for Prince  
13 Mohamad al-Faisal al-Saud.

14 Prince Mohamad is a member of the royal family of  
15 Saudi Arabia but not a government official. In his case as  
16 well, plaintiffs have failed to assert a prima facie case of  
17 jurisdiction, either as general jurisdiction or a specific  
18 jurisdiction based on actions outside the United States  
19 expressly aimed at the United States or on the theory of  
20 conspiracy.

21 In light of Mr. Cooper's argument, I'm going to focus  
22 on the conspiracy issue, but I want to make a couple of remarks  
23 about requirements that tortious actions outside the United  
24 States be expressly aimed at the forum.

25 In Prince Mohamad's case, the plaintiffs do not allege

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1 that he transferred any money or property to any person or  
2 organization. He is not accused even of making charitable  
3 contributions. On the contrary, the Federal Insurance  
4 plaintiffs complaint originally contained allegations that he  
5 had made contributions to four charities. I think it is four,  
6 but when we pointed out to them that there was no factual basis  
7 for that assertion, they did the right thing and agreed to  
8 delete those allegations from their complaint, and your Honor  
9 has a stipulation to that effect.

10 The only concrete allegation against Prince Mohamad is  
11 that he was chairman of Faisal Islamic Bank in Sudan at which,  
12 according to an Al Qaeda operative named Jamal Al Fadl, who  
13 testified at the trial of the 1998 East Africa embassy bombers,  
14 "We got account," end of quotation, end of relevant testimony.

15 Plaintiffs do not allege anything further about that  
16 single three-word line of testimony. In particular, they do  
17 not allege any facts suggesting that Prince Mohamad knew of the  
18 existence of the account, let alone that he knew anything about  
19 any use to which the account was put.

20 I'm not going to repeat Mr. Cooper's argument, but it  
21 is clear that this doesn't meet the standard for tortious  
22 conduct expressly aimed at the United States. For a Saudi to  
23 serve as chairman of a bank in Sudan is neither tortious nor  
24 expressly aimed at the United States. There is no allegation  
25 that Prince Mohamad intended or directed that the mysterious

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1 account be used against the United States.

2 More generally, as Judge Robertson ruled, banks, and a  
3 fortiori their chairman, are not subject to jurisdiction in  
4 foreign countries based on the actions of their depositors.  
5 Indeed, if the rules were otherwise, if serving as a bank  
6 chairman were enough to subject an individual to jurisdiction  
7 in any place where a deposit might possibly later have been  
8 misused, all kinds of mischief would follow.

9 Just as an example, the American chairman of Suntrust  
10 Bank, where the 9/11 terrorist leader Mohammad Atta was  
11 photographed withdrawing money would be personally subject to  
12 suit in Indonesia, in Spain, in Egypt, in Israel, and, indeed,  
13 in Saudi Arabia because they are all places where Al Qaeda has  
14 threatened to kill people and where it has in fact killed  
15 people.

16 Turning to conspiracy, plaintiffs argue that Prince  
17 Mohamad and other defendants are subject to jurisdiction in New  
18 York because all defendants were members of a conspiracy with  
19 Al Qaeda, making the 9/11 terrorists their agent. But the  
20 Second Circuit has said repeatedly, I'm quoting from the Lehigh  
21 Valley case, that "the bland assertion of conspiracy is  
22 insufficient to establish personal jurisdiction over a foreign  
23 defendant; that, on the contrary, plaintiff must not only make  
24 a prima facie showing of a conspiracy, but must allege specific  
25 facts showing that the particular defendant was a member of the

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1 conspiracy."  
2 Now, one way to satisfy that requirement, of course,  
3 is to allege, if there are reasonable grounds for doing so,  
4 that the particular defendant was a party to an agreement  
5 constituting a conspiracy to injure Americans. But in the case  
6 of Prince Mohamad and of many other defendants who are here and  
7 can speak for themselves, there is no allegation that he  
8 reached an agreement with anybody about anything. The  
9 plaintiffs use the word "conspiracy" dozens of times, but they  
10 never plead any facts showing that Prince Mohamad conspired  
11 with anyone in particular about any objective or activity.  
12 Plaintiff can also show indirectly that a foreign  
13 defendant was a member of a conspiracy, but to do so, he must  
14 show three things. And here, I'm citing, among many cases, the  
15 Second Circuit's decision in Grove Press: "Plaintiff must show  
16 that the in-state actor acted, one, for the benefit of the  
17 out-of-state defendant; two, with the knowledge and consent of  
18 the foreign defendant; and, three, under some control by a  
19 foreign defendant." And again, none of those requirements is  
20 met here.

21 There is, and this is most important, no allegation  
22 that Prince Mohamad benefitted in any way, financially or  
23 otherwise, from the terrorist activities.

24 As a member of the Saudi Royal Family and a banker, he  
25 benefits from a stable world. He has never said or done

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1 anything that expressed hostility toward the United States or  
2 toward Americans. The plaintiffs haven't pointed to anything  
3 he has ever said that suggests that 9/11 was for him anything  
4 other than the horror that he promptly said it was shortly  
5 after 9/11 and long before any of these complaints were filed.

6 With respect to the Second Circuit's second  
7 requirement, that the nonresident defendant have knowledge of  
8 and that he consent to the tortious acts in the forum, again,  
9 there's no such allegation in Prince Mohamad's case. There's  
10 not the slightest suggestion that he knew anything about 9/11  
11 or any other violent activity. The only fact alleged is the  
12 account, and there is no allegation of what effects the account  
13 had in New York or anywhere else, and no allegation that Prince  
14 Mohamad had any knowledge of or consented to any such effects.

15 Finally, there's not the slightest suggestion that the  
16 9/11 conspirators were acting in any way at Prince Mohamad's  
17 direction or control or at his request or on his behalf.  
18 Nothing in the complaint connects him in any way with the  
19 events, the horrendous, terrible events that injured the  
20 plaintiffs.

21 In sum, Al Qaeda was and is undoubtedly a conspiracy,  
22 but it's not enough for the plaintiffs to allege that  
23 conspiracy and then simply assert over and over that dozens of  
24 other people were members of that conspiracy. The plaintiff  
25 must allege specific facts connecting the nonresident defendant

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1 to activity in New York in furtherance of the conspiracy. I'm  
2 quoting from the "Nazi-Era Cases" at 320 F.Supp.2d 222.  
3 Plaintiffs have utterly failed to allege any connection with  
4 respect to Prince Mohamad. They say over and over, a little  
5 bit in the complaint and a lot in the briefs, that he aided Al  
6 Qaeda, that he supported Al Qaeda, that he conspired with Al  
7 Qaeda, but they do not allege any instance of any such aid or  
8 support.

9 If I can turn for a minute to discovery, plaintiffs  
10 aren't entitled to jurisdictional discovery because, as  
11 Mr. Cooper said, the Jazini case quite clearly requires that  
12 they first state a prima facie case for jurisdiction, that they  
13 first are able responsibly to allege facts that, if proved,  
14 would be sufficient to establish jurisdiction. Vague and  
15 generalized allegations are insufficient to make out a prima  
16 facie showing of jurisdiction over an out-of-state defendant.

17 Here, discovery against Prince Mohamad would be a  
18 license to fish. Prince Mohamad's chairmanship of a bank that  
19 allegedly had an account in 1996, which is when Osama Bin Laden  
20 questionably left Sudan, that was associated with an Al Qaeda  
21 member falls miles short of suggesting that Prince Mohamad  
22 personally expressed, expressly aimed any evil at the United  
23 States. A bank chairman cannot be personally subject to  
24 discovery anywhere in the world whenever a plaintiff alleges  
25 that a bad person had a deposit in his bank. Or lots of

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1 American bank chairmen would be subject to suit all over the  
2 place. The issue is no different for Prince Mohamad.  
3 Plaintiffs' repeated but wholly conclusory allegation  
4 that Prince Mohamad assisted Al Qaeda or conspired with Al  
5 Qaeda does not entitle them to disrupt his life to see whether  
6 they can find out whether or not there was any good factual  
7 basis in the first place for their deeply offensive claims.  
8 Your Honor, Judge Robertson said -- I think these were  
9 wise words. He said in the Burnett case when it was before  
10 him, "It is difficult to imagine uglier or more serious charges  
11 than those the plaintiffs have leveled at these defendants.  
12 The use of the privileged medium of a lawsuit to publicly label  
13 someone an accomplice of terrorists can cause incalculable  
14 reputational damage. Fairness requires extra careful scrutiny  
15 of plaintiffs' allegations as to any particular defendant."  
16 Prince Mohamad and each of the other defendants who  
17 are before you today ask for that careful scrutiny before they  
18 are kept in this case.  
19 Thank you, your Honor.  
20 MR. LUTZ: Good morning, your Honor. My name is  
21 Christopher Lutz. I represent the estate of Mohammad Abdulla  
22 Aljomaih.  
23 My goal is to focus on the pleadings and facts  
24 relating to Mr. Aljomaih as related to the law explained to you  
25 by Mr. Cooper and Mr. Cohen. In Calder, the U.S. Supreme Court

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1 said that in a multidefendant case, jurisdictional facts had to  
2 be examined on a defendant-by-defendant basis, that a general,  
3 overall description of facts, jurisdictional facts not keyed to  
4 particular defendants was insufficient.

5 And so, what is the specific situation then for my  
6 client, the late Mr. Aljomaih? So far, you've heard from  
7 counsel for banks and counsel for princes. Mr. Aljomaih was  
8 simply a private citizen, a successful Saudi businessman. He  
9 first became involved in this litigation when his name appeared  
10 on a list filed in the Burnett case in May of 2003. There are  
11 no allegations in the third amended complaint in Burnett as to  
12 him, and there were no allegations as to him when he was added  
13 to Burnett. He was added in a way that was slapdash in many  
14 ways, terrible service problems. He was served by publication,  
15 though there was no authority for that. The wrong name was put  
16 on the service list. But all we had at that time was the  
17 addition of his name to the case, the bare edition of his name  
18 to the case.

19 At the time he was added, Mr. Aljomaih was 88 years  
20 old. He was in declining health and has since died, sadly, in  
21 late April of this year. We filed a suggestion of death a  
22 month ago. We provided plaintiffs' counsel with his death  
23 certificate, but they continue to pursue him and his name and  
24 his reputation.

25 At the time he was added, as I say, he was simply a  
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1 highly respected Saudi businessman. He had never ever been  
2 associated in the public press or in any reports or anything  
3 else with terrorism or Al Qaeda or any of it. He lived all his  
4 life in Saudi Arabia. The last 60 years of his life he lived  
5 in Riyadh, and that residence is an important point I want to  
6 come back with.

7 He founded businesses in the late 1930s that became  
8 the means of marketing American goods in Saudi Arabia. His  
9 businesses became the biggest distributors of General Motors  
10 cars and Coca-Cola, and in general, if you think about it, it  
11 is an odd line for someone accused of wanting to damage the  
12 United States. He never had any personal significant  
13 connection with the United States. He never lived here. He  
14 last made a business trip to the United States 40 years ago.  
15 From 1993 to 1999, he made a few brief visits for treatment of  
16 a heart condition and cancer. But since 1999, he had never  
17 been in this country. He owned no real estate here, he owned  
18 no home. He had no bank accounts. He did no business in this  
19 country personally. In short, there was nothing connecting Mr.  
20 Aljomaiah to the United States of America.

21 Given all of that, and given the defects in service  
22 that I've mentioned, we filed our motion to dismiss in October  
23 of 2003, before Judge Robertson. We pointed out all the things  
24 that I've mentioned, and it seemed clear that there was no  
25 general jurisdiction, no specific jurisdiction, no reason at

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1 all to hold Mr. Aljomaih in this case.

2 With those facts before them, with that motion before  
3 them, the plaintiffs had a burden. They had thus up to that  
4 point offered no allegations at all for Mr. Aljomaih. Their  
5 burden at that point was to offer, as other counsel have told  
6 you, specific and not conclusory facts or allegations, excuse  
7 me, establishing a prima facie case of jurisdiction.

8 Now, I want to pause for a minute on the requirement  
9 of specific allegations. In all the jurisdiction motions that  
10 have been filed, when plaintiffs are challenged on the  
11 specificity of their allegations, there is a familiar pattern.  
12 They very briefly, very briefly deal with the individual  
13 defendant making the motion, and then they launch off into what  
14 has become a set piece, a long, detailed history of Al Qaeda.

15 Mr. Motley has given what he sometimes calls his  
16 terror factory speech two or three times in these litigations.  
17 That's all detailed, and it's all specific. But in this case,  
18 in the case of this motion, it has nothing whatever to do with  
19 Mr. Aljomaih. These long descriptions in the papers, the long  
20 descriptions in presentations to the Court are beside the point  
21 for Mr. Aljomaih unless they deal with Mr. Aljomaih  
22 specifically, and have specific allegations as to him.

23 What did they actually do as to Mr. Aljomaih in their  
24 opposition to our motion to dismiss? One thing they did is the  
25 same thing that Mr. Cohen said happened for Prince Mohamad.

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1 There were endless conclusory statements that Mr. Aljomaih  
2 supported Al Qaeda, supported terrorism, but purely conclusory.  
3 No indication of what he had done, what steps he had taken, how  
4 he had done that. All conclusory, all insufficient, and all  
5 offensive and wrong.

6 What is there specific to Mr. Aljomaih and what the  
7 plaintiffs have filed? Do they attach papers indicating that  
8 he's been identified as a supporter of terrorism? No, they  
9 don't. They do four things. They attach pictures from  
10 Aljomaih company Web sites. They make the claim that a  
11 company, not Mr. Aljomaih, but an Aljomaih company made a  
12 charitable donation to an unspecified charity. They say he is  
13 a wealthy, successful businessman, and they refer to something  
14 that I want to come back to, that they call the Golden Chain.

15 Now, demonstrating that Mr. Aljomaih was a successful  
16 businessman or that his companies provided good customer  
17 service, which is what the attachments to the Web pages show,  
18 doesn't get close to providing the specific allegations  
19 necessary to indicate that there's personal jurisdiction over  
20 him. None of it changes his lack of connection to the United  
21 States. None of it demonstrates that he intentionally targeted  
22 people in this country. Nothing. There's simply nothing.

23 But they do speak of this document that they call the  
24 Golden Chain, and I suspect that Mr. Motley or other  
25 plaintiffs' counsel may describe this at some length, and so

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1 I'd like to devote the remainder of my remarks to that, and I  
2 think counsel that follow me will do that as well.

3 In the opposition, the plaintiffs say that Mr. Aljomaih  
4 appears, his name appears on this document that they call the  
5 Golden Chain. They say it is a list of Al Qaeda donors. At  
6 one point, they say it is an honor roll of Al Qaeda donors.

7 Now, the question is: Is that enough to establish the  
8 specific, not really an allegation, but is it enough to show  
9 that there is personal jurisdiction over Mr. Aljomaih? A quick  
10 examination of the document shows that that can't possibly be  
11 the case. There's nothing in the document itself to indicate  
12 that it is what the plaintiffs say it is. And even if it were,  
13 there's no good reason to think that anyone listed on that  
14 document is Mohammad Aljomaih.

15 First, let me describe to you what the Golden Chain  
16 is.

17 You may remember in the September arguments that, I  
18 think, Ms. Bierstein held up and talked about a document that  
19 she said had come from Bosnia, that had been seized by the  
20 Bosnian police. The Golden Chain so-called is another one of  
21 these Bosnian documents, the plaintiffs claim. It is a single  
22 sheet of paper. It is handwritten in Arabic. It is unsigned,  
23 and it is undated. There's no way to tell from the document  
24 who wrote it or when it was written, and the plaintiffs haven't  
25 suggested either.

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1 It consists and this, a translation is provided of  
2 pertinent parts of it in our reply brief. It consists of very  
3 little. There is some language that I understand to be a verse  
4 from the Koran about charity, and then there is a list of  
5 names. That's the entirety of the document. It doesn't call  
6 itself a Golden Chain. It doesn't say the people listed are  
7 donors. It doesn't mention donations. That's it.

8 So, by itself, just by itself, given Mr. Aljomaih's  
9 complete lack of contact with the United States, the failure of  
10 the plaintiffs to say anything about what he specifically did  
11 to support this conspiracy that they attack, even on its face,  
12 the Golden Chain is not enough to hold him in this case.

13 But there's even another reason to say that it's not  
14 enough. In fact, even if the document were what the plaintiffs  
15 claim, it points in the other direction. In other words, it  
16 points not at Mr. Aljomaih, this Mr. Aljomaih, but elsewhere.  
17 It does not contain the words Mohammad Abdullah Aljomaih.  
18 There is one word, Aljomaih. It doesn't say which Aljomaih.  
19 It doesn't have a first name or middle name, and that name  
20 Aljomaih is paired with the word Jiddah.

21 Now, Jiddah is a city in Saudi Arabia on the Red  
22 Coast. You may remember that I said earlier, Mr. Aljomaih had  
23 lived for 60 years in Riyadh. Riyadh is hundreds of miles away  
24 from Jiddah. He never lived in Jiddah. So even if this  
25 document is what the plaintiffs say it is, and even if it has

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1 some significance, it is identifying an Aljomaih that is not  
2 the man that I represent.

3 That's all the plaintiffs have. No connection to the  
4 United States, a single handwritten document that seems to  
5 point to another person. There is no reason to keep Mohammad  
6 Aljomaih in this case. There is no allegation, no showing of  
7 deliberate targeting or purposeful direction of his actions  
8 towards the United States, your Honor. His motion to dismiss  
9 for lack of personal jurisdiction should be dismissed.

10 Thank you very much.

11 THE COURT: Thank you, sir.

12 MS. BERNABEI: Good morning, your Honor. Lynne  
13 Bernabei, representing Mr. Al-Husaini, a defendant who has also  
14 filed a motion to dismiss on the grounds of personal  
15 jurisdiction.

16 Like Mr. Aljomaih, his name was added to the complaint  
17 with no allegations alleged against him. The same service  
18 problems adhere in his case as in the case of Mr. Aljomaih.  
19 But what I'd like to talk about today is what is undisputed,  
20 that there is no grounds for a specific jurisdiction against  
21 Mr. Al-Husaini.

22 It is undisputed that Mr. Al-Husaini has absolutely no  
23 contacts with this country. He's an elderly businessman in  
24 Saudi Arabia. He's never visited this country, never travelled  
25 here, owns no property here, no bank accounts, conducts no

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1 business here, and his companies in Saudi Arabia conduct no  
2 business with American companies.

3 It is also undisputed that the only basis on which  
4 plaintiffs have asserted personal jurisdiction over him is on a  
5 theory that Mr. Al-Husaini purposefully directed his activities  
6 towards the United States by providing financial support to Al  
7 Qaeda.

8 Now, if the Court looks at the supposed evidence the  
9 plaintiffs have brought forward, there is in fact only two  
10 pieces of what they call evidence. The first is a Wall Street  
11 Journal article, in which Mr. Al-Husaini is mentioned as being  
12 a director of a foundation which sponsors seminars and schools  
13 in the Netherlands and that some of the 9/11 hijackers attended  
14 some of those seminars.

15 Plaintiffs claim, we believe misleadingly, in a  
16 distorted fashion in their brief, that what this article says  
17 is that Mr. Al-Husaini's companies are principal supporters of  
18 the Al Waqf Foundation, a Dutch entity that played a major role  
19 in the recruitment of terrorists including six of the September  
20 11 hijackers. As we point out in our brief and we cite to that  
21 article, it does not say that. What the article says is that  
22 Mr. Al-Husaini is on the board of a foundation which funds  
23 schools and seminars and which Dutch investigators believed  
24 that some of the 9/11 hijackers attended some of those  
25 seminars.

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1 It also says that these seminars may create a milieu  
2 sympathetic to Islam. This is a far cry from saying  
3 Mr. Al-Husaini is recruiting terrorists, is contributing to  
4 terrorists or himself has recruited the 9/11 hijackers, which  
5 is what the plaintiffs in this case suggest.

6 The plaintiffs also claim that this article, which is  
7 attached to their pleadings, they also claim that Spanish  
8 investigators believed that the Al-Husaini family transferred  
9 money to Mr. Zouaydi, an alleged terrorist who Spanish  
10 authorities now have in custody. In fact, the article doesn't  
11 state that either. What the article says is that Mr.  
12 Al-Husaini, Al-Husaini's companies had financial transactions  
13 with Zouaydi, but there is nothing alleged or claimed in the  
14 article that this was at a time or in any way in connection  
15 with Mr. Zouaydi's alleged terrorist actions.

16 The second piece of supposed evidence that the  
17 plaintiffs present of Mr. Al-Husaini's connection to this vast  
18 conspiracy is that his name appears on the handwritten document  
19 recovered in 2003 by the Bosnian police in Sarajevo, with what  
20 we believe they call misleadingly the Golden Chain.

21 Without repeating what Mr. Lutz has said, this Court  
22 should recognize that the Golden Chain document, according to  
23 the plaintiffs' counsel's chief investigator, Jean Claude  
24 Brisard, he has stated that this document was created in 1988.  
25 This date is critical because, at most, this document in 1988

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1 would indicate persons on the list are donors or potential  
2 donors to the mujaheddin in Afghanistan or Osama bin Laden in  
3 Afghanistan.

4 In 1988, the United States Government was supporting  
5 Al Qaeda and the mujaheddin to get the Soviets out of that  
6 area. In fact, as we show in Exhibit 6 to our reply, President  
7 Reagan made five speeches between 1987 and 1988 showing U.S.  
8 open support for the mujaheddin. In fact, it was not until the  
9 mid-1990s when Bin Laden and the Al Qaeda began targeting the  
10 United States. The Wall Street Journal, upon which the  
11 plaintiffs heavily rely, itself has stated after a series of  
12 libel suits were brought against it that this list, the  
13 supposed Golden Chain, is not evidence that any of the persons  
14 on that list provided any support to Bin Laden or Al Qaeda  
15 after 1988 or at any time when Al Qaeda was targeting the  
16 United States.

17 It is also very important for this Court to know that  
18 two British Courts and one district court in the United States  
19 have already rejected this document as evidence of  
20 participation of individual Saudis in terrorist actions and in  
21 particular in the 9/11 atrocities. These two British courts in  
22 libel actions brought against the Wall Street Journal in one  
23 case and Mr. Brisard in another case have said clearly that a  
24 handwritten document does not indicate anything about these  
25 persons being potential donors to Al Qaeda or the atrocities

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1 that took place in New York City.

2 Now, plaintiffs also make much of the fact that this  
3 document was included in a government proffer to the Court in  
4 the Northern District of Illinois in the Arnaout prosecution.  
5 Mr. Arnaout was connected with the Benevolence International  
6 Foundation. What they failed to tell the Court is that Judge  
7 Conlon of the Northern District of Illinois rejected that  
8 proffer and said the document was not, could not be admitted or  
9 used in that prosecution because it constituted impermissible  
10 hearsay evidence of any terrorist conspiracy. Its author was  
11 unknown, the government did not provide its date, and  
12 therefore, the judge in that case said that it could not be  
13 used, did not fit within the coconspirator exception.

14 Therefore, we believe that this Court, just as those  
15 two courts rejected any evidentiary value to this as showing  
16 any involvement of any, certainly of any individual Saudi  
17 citizen to any of the terrorist acts of Al Qaeda, that it  
18 should also reject this unwritten, undated, handwritten  
19 document as indicating anything of the sort.

20 Therefore, we believe that if your Honor looks at the  
21 specific evidence the plaintiffs have brought forward to link  
22 our client, Mr. Al-Husaini, to the events of 9/11, you will  
23 find there's absolutely no fact showing that Mr. Al-Husaini had  
24 any involvement with the activities of terrorists or Al Qaeda,  
25 and that even if you credit Golden Chain with some evidentiary

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1 value, it was, by the plaintiffs' own admission, it was created  
2 at a time before Al Qaeda was formed and years before Al Qaeda  
3 targeted the United States.

4 Therefore, there's no basis for saying Mr. Al-Husaini  
5 directed any actions toward the United States as is required  
6 under the Burger King and Calder analysis.

7 Thank you.

8 THE COURT: Thank you, ma'am.

9 MR. LIEBMAN: May it please the Court, Ron Liebman for  
10 National Commercial Bank.

11 Your Honor, I'm going to limit my remarks to points  
12 that relate individually to National Commercial Bank. With the  
13 Court's permission, I'd like to adopt the arguments made by Mr.  
14 Cohen and Mr. Cooper on behalf of their clients as those points  
15 apply as well to National Commercial Bank.

16 I'd like to address two things. First, specific  
17 jurisdiction as it relates to NCB and then, briefly, general  
18 jurisdiction.

19 With respect to specific jurisdiction, your Honor, the  
20 plaintiffs concede that they're not trying to allege or prove  
21 that National Commercial Bank participated in planning or  
22 carrying out of the September 11 attacks or even that the  
23 assistance the plaintiffs allege NCB provided was used  
24 specifically to assist in those attacks. Instead, the  
25 plaintiffs speculate that NCB may have participated in some

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1 unspecified way, in fund-raising activities that the Muslim  
2 World League and another defendant in this case supposedly  
3 conducted in the U.S.

4 This speculation is based essentially upon some  
5 advertisements that were run by charities in a magazine. The  
6 advertisements seeking charitable donations appeared, according  
7 to the plaintiffs, in a magazine called the Muslim World League  
8 Journal. The charities who were seeking funds were called the  
9 Islamic Solidarity Fund, and Kahir Fund. The magazine, the  
10 plaintiffs contend, was available in the United States, and I  
11 think it was. And that the advertisements listed the numbers  
12 of bank accounts that the Muslim World League claimed to have  
13 at two Saudi banks, Al Rajhi Bank and National Commercial Bank.  
14 And that's it.

15 There is no allegation, no facts in support of  
16 National Commercial Bank having done anything with respect to  
17 these advertisements. There's no allegation that the  
18 advertisements were placed by the bank. Indeed, they were  
19 placed by the charities. The only assertion is that the  
20 charities, in seeking funds from contributors in the  
21 advertisements, advised the funds, rather, the contributors,  
22 that they claimed to have bank accounts at two banks in Saudi  
23 Arabia, as I said, Al Rajhi Bank, and National Commercial Bank.

24 Those facts, your Honor, don't show that NCB did  
25 anything from which a legal claim could arise. The facts don't

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1 show that NCB as opposed to the Muslim World League did  
2 anything in or aimed anything at the United States.

3 Your Honor, let me next turn to general jurisdiction,  
4 as it relates to NCB. That's the concept of doing business in  
5 the United States. The Burnett plaintiffs don't argue that NCB  
6 is doing business in the U.S. In fact, neither do the Ashton  
7 plaintiffs, but the Ashton plaintiffs ask for jurisdictional  
8 discovery to explore what, in essence, are two outdated  
9 connections between National Commercial Bank or its affiliates  
10 with the U.S. Those outdated connections are not enough to  
11 show that NCB is doing business in the U.S. That test, the  
12 doing business test, requires proof that NCB had substantial  
13 continuous and systematic contacts with the U.S. And the test  
14 looks to contacts, if any, between NCB and the U.S. as of the  
15 date of the complaints in this case require

16 The Burnett complaint was filed on August 15, 2002,  
17 and the Ashton complaint was filed on September 4, 2002.  
18 National Commercial Bank has submitted affidavits in support of  
19 its motion, which are uncontradicted, demonstrating that NCB  
20 did not have substantial continuous or systematic contact with  
21 the U.S. as of those relevant dates.

22 Now, when parties submit affidavits addressing  
23 jurisdictional contacts, the Court is to look beyond the  
24 allegations of the complaint and assess the facts. Here are  
25 the facts about NCB as established and contained in those

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1 affidavits: NCB is a Saudi bank. Its headquarters, branches,  
2 and principal place of business are all in Saudi Arabia. It's  
3 regulated by the Saudi Arabian Monetary Agency, which is the  
4 Central Bank of Saudi Arabia. NCB is not registered or  
5 licensed to do business in the U.S. It's not regulated by any  
6 agency of the U.S. Government. NCB does not have a branch in  
7 the United States and has not had one since its New York City  
8 branch was closed in 1992.

9 Now, with those basic facts, and there are other facts  
10 in these affidavits, your Honor, that negate jurisdiction -- I  
11 won't go through them one by one; I'll simply rely on the  
12 papers. But with that basic background, here are the two  
13 outdated U.S. contacts that the Ashton plaintiffs rely on to  
14 argue for jurisdictional discovery over whether or not NCB is  
15 doing business in the U.S.

16 First, NCB used to have second tier subsidiary that  
17 had an office in New York. It was a subsidiary of an English  
18 company whose parent was NCB. That subsidiary was dissolved in  
19 February of 2001, and the New York office space was surrendered  
20 to the landlord in January of 2001, and the surrender document  
21 is a part of this record, submitted by us.

22 Two, NCB was a party in two U.S. lawsuits back in the  
23 1990s. Now, those lawsuits ended by 1998. Even if those  
24 lawsuits were still pending today, and they're not, that, under  
25 the law, in and of itself is insufficient to establish either

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1 personal jurisdiction or a right to discovery. But, in any  
2 event, your Honor, as I say, those lawsuits ended by 1998. In  
3 other words, both of these U.S. contacts were long gone before  
4 the relevant benchmark dates of August and September of 2002,  
5 when the Burnett and Ashton complaints were filed. And for  
6 that reason, your Honor, there is neither specific jurisdiction  
7 nor an entitlement to discovery over general jurisdiction, nor  
8 general jurisdiction over NCB.

9 Thank you, your Honor.

10 THE COURT: Thank you, Mr. Liebman.

11 MR. KAHN: Peter Kahn of Williams & Connolly, on  
12 behalf of defendant Abdulrahman Bin Mahfouz.

13 I will not repeat the arguments of my colleagues and  
14 would simply adopt them to the extent that they affect my  
15 client directly.

16 I would like to focus solely on the issue which has  
17 not been addressed as to whether a corporate position alone is  
18 sufficient to establish personal jurisdiction over an  
19 individual. Our client, Abdulrahman Bin Mahfouz, is mentioned  
20 only three times in the entire 406-page third amended  
21 complaint. The sum and substance of the allegations against  
22 him, total sum and substance, is that he held corporate  
23 positions with three entities. One, a Channel Islands  
24 charitable organization known as Muwafaq, or Blessed Relief,  
25 and second, a Saudi petroleum corporation, Nimir, that already

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1 has been voluntarily dismissed from this case by the  
2 plaintiffs. And third, a Saudi commercial bank that you just  
3 heard about, National Commercial Bank, or NCB.

4 Now, nowhere in the complaint do plaintiffs allege any  
5 specific conduct as opposed to status by Mr. Bin Mahfouz.  
6 Nowhere do they allege that he participated in, ratified, or  
7 even knew of these entities' alleged wrongful conduct. In  
8 order to establish personal jurisdiction over him, plaintiffs  
9 must allege sufficient facts in the complaint that make a prima  
10 facie case of linking him personally, not the entity, but him  
11 personally to the forum. And this, they have not done.

12 As if to underscore the point, your Honor, the  
13 plaintiffs' opposition brief, once we raised this, contains a  
14 laundry list of more than 140 paragraphs they cite in the  
15 complaint that supposedly show that Mr. Bin Mahfouz's  
16 involvement was with a scheme to fund Al Qaeda. Yet, if you  
17 look at each one of the paragraphs that they cite in their  
18 opposition at page 6, not one mentions him by name. So, as  
19 I've said, plaintiffs rely entirely on his alleged status as an  
20 officer, director or trustee of these three entities that I  
21 mentioned.

22 This is insufficient for two reasons, your Honor.  
23 First, these alleged positions themselves do not, as a matter  
24 of law, create jurisdiction over him personally. And,  
25 secondly, these three entities have no relevant presence in the

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United States.

First, your Honor, on the first point, the case law is clear, and we cite it at page 8 of our opening brief, personal jurisdiction over the employees or officers of a corporation in their individual capacities must be based on their personal contacts with the forum and not their acts on contacts carried out solely in a corporate capacity. Plaintiffs have made no showing of any personal contacts, none, by Mr. Bin Mahfouz with the United States.

Now, in an attempt to correct this deficiency, plaintiffs, for the first time, in their opposition brief, allege at page 7 that he was a stockholder in two publicly traded American companies. I would suggest that that no more established personal jurisdiction than their previous allegations that merely holding a corporate position in a foreign company that arguably does business in the United States somehow establishes personal jurisdiction. It does not. And here, the foreign entities were not even doing any business in the United States at any relevant time.

Let's take each one of those three entities that I mentioned. First, Blessed Relief or Muwafaq was a charitable organization that plaintiffs allege had a post office box in the United States. But they specifically acknowledge in their complaint at paragraph 334 that Mr. Bin Mahfouz was not an incorporator of the United States branch.

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1 Now, the records of the Delaware secretary of state's  
2 office which we have attached to our moving papers show that  
3 since 1992, when the charity first appeared, no fees were paid,  
4 and the Delaware secretary of state declared the entity to be  
5 void two years later in 1994. Even if it ever had come into  
6 existence, no fees were paid from day 1. The records that are  
7 before the Court show no involvement by Mr. Bin Mahfouz. And  
8 furthermore, and contrary to plaintiffs' unsubstantiated  
9 allegations, Blessed Relief, and I underscore this, your Honor,  
10 is not on any United States list of specially designated global  
11 terrorist entities. We've provided the Court with the link to  
12 the U.S. Treasury Department Web site which lays that out  
13 clearly as part of the public record.

14 The second entity, your Honor, Nimir Petroleum, Mr.  
15 Bin Mahfouz is variously alleged to have been the chair, CEO,  
16 or shareholder and board member. Now, in a vain effort to  
17 create the appearance that the Court has jurisdiction over  
18 Nimir, plaintiffs allege that the company owns a subsidiary,  
19 Nimir Petroleum U.S.A., located in Dallas, Texas, but like the  
20 same assertion with regard to Blessed Relief that it had a  
21 branch in the U.S., this allegation is also a red herring.

22 We have attached to our moving papers, your Honor, a  
23 certification from the Texas secretary of state that  
24 demonstrates that Nimir Petroleum's U.S. existence was  
25 forfeited and made null and void as of February 1996. It was

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1 similarly declared void by the Delaware secretary of state on  
2 March 1, 2000.

3 Most importantly, however, as I said at the outset of  
4 my argument, plaintiffs have already voluntarily dismissed this  
5 entity, their claimed allegations against it in this case.  
6 Nimir is no longer in this case.

7 Finally, plaintiff alleges that Abdulrahman Bin  
8 Mahfouz is a shareholder and a member of the board and vice  
9 chairman of the executive management committee, or was, I  
10 should say, of National Commercial Bank, which you just heard  
11 about from Mr. Liebman. As with all entities here, plaintiffs  
12 allege the bank operated as financial conduit or funnel for Al  
13 Qaeda. But here again, nowhere is it alleged that Mr. Bin  
14 Mahfouz played any part in, ratified, or even knew of the  
15 bank's alleged role as a conduit.

16 In an attempt to tie NCB to the United States,  
17 plaintiffs allege that the bank was implicated in the allegedly  
18 fraudulent schemes and practices of BCCI, between 1986 and  
19 1990. Well, your Honor, our client was a teenager at that  
20 time.

21 In sum, personal jurisdiction depends on the  
22 defendant's personal contacts with the forum state at the time  
23 the lawsuit was filed, not sometime in the remote past. Bare  
24 allegations of nebulous involvement in intentional torts within  
25 this jurisdiction such as those made against Mr. Bin Mahfouz

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1 are simply not enough. Plaintiffs make no claim that Mr. Bin  
2 Mahfouz personally has ever had any relevant contact with the  
3 United States. He is not alleged to have participated in,  
4 ratified, or even known of the alleged wrongful conduct.  
5 Merely holding a corporate position in a foreign company does  
6 not create personal jurisdiction even if the company does  
7 business in the United States, according to what we believe is  
8 the plaintiffs' wrongful allegations. There is simply no  
9 personal jurisdiction over Mr. Bin Mahfouz. Whether the Court  
10 has jurisdiction over the corporate entities is not the issue.

11 Thank you, your Honor.

12 THE COURT: Thank you.

13 MR. GAUCH: May it please the Court, James Gauch on  
14 behalf of the Saudi Bin Laden group and Bakr, Omar and Tariq  
15 Bin Laden.

16 I'm mindful that we're into the second hour of  
17 argument, and, under the Court's ground rules, I will not  
18 address the two primary arguments, whether the SBG defendants  
19 purposefully directed their conduct into the United States  
20 under Calder and Burger King -- you heard from Mr. Cooper on  
21 that -- and whether there is conspiracy jurisdiction, which Mr.  
22 Cohen addressed.

23 I would like to address simply the point of general  
24 jurisdiction and, specifically, plaintiffs' claim that they're  
25 entitled to jurisdictional discovery in an effort to establish

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1 general jurisdiction over SBG or the individual Bin Laden SBG  
2 defendants. Plaintiffs state this argument as a fall-back but  
3 stop well short in their briefs of actually arguing that they  
4 have identified sufficient contacts to make a case that general  
5 jurisdiction exists.

6 Both in Ashton and Burnett, they express a subjective  
7 belief that the jurisdictional discovery would reveal  
8 substantial contacts, and their jumping-off point for that  
9 argument is an article that appeared in the New Yorker two  
10 months after the 9/11 attacks. As we've explained in the  
11 briefs, the particular contacts they point to are plainly  
12 inadequate to establish a prima facie case of jurisdiction,  
13 which, as you've heard earlier this morning, under the Jazini  
14 case, the Second Circuit clearly requires in order to obtain  
15 jurisdictional discovery. And there's no dispute in this case  
16 as to what a prima facie case of personal jurisdiction would  
17 constitute, which plaintiffs themselves quote language out of  
18 Bellepointe v. Freeport-McMoran that a prima facie case  
19 consists of facts, which, if true, are sufficient in themselves  
20 to establish jurisdiction.

21 We've gone through in our briefs the particular  
22 contacts that the plaintiffs have pointed to in their briefs,  
23 as well as the one contact that they actually allege in their  
24 complaint. I won't belabor the point by going through those  
25 individually, but I will make several broader points. One is

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1 that there is absolutely no assertion anywhere in the complaint  
2 or in any of the briefs that the individuals that I represent,  
3 Bakr, Omar and Tariq Bin Laden, had any relevant contacts with  
4 the United States.

5 As to SBG, we've explained that the numerous contacts  
6 that they cite are either remote in time -- they cite donations  
7 to Harvard University more than ten years ago. Many of the  
8 contacts that they cite have nothing to do with SBG but in fact  
9 concern personal holdings of other Bin Laden family members  
10 that are not in the case.

11 They also raise the issue of passive investments which  
12 are clearly irrelevant as a matter of law, and they point to an  
13 address that SBG used to have in Rockville, Maryland, has  
14 asserted to have had. They tried to create a factual dispute  
15 as to the status of that office, whether it was a subsidiary of  
16 SBG or in fact an office of SBG itself, but they acknowledge  
17 that the office was closed. But as Mr. Liebman said, the  
18 relevant time period is when the complaint was filed, and that  
19 contact is irrelevant.

20 In conclusion, I would like to make the point, respond  
21 to plaintiffs' likely argument that, without discovery, they  
22 cannot establish a prima facie case of jurisdiction, it would  
23 be unfair to put them to that burden. That argument has  
24 already been clearly rejected in the Jazini case. The Second  
25 Circuit acknowledged that it is difficult and may be extremely

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1 difficult to establish jurisdiction over foreign corporations,  
2 but that is simply the nature of the process. They explained  
3 that the rules governing the establishment of jurisdiction over  
4 foreign corporations is clear and settled, and it is just as  
5 clear that the plaintiffs are not entitled to jurisdictional  
6 discovery.

7 Thank you.

8 THE COURT: Thank you, sir.

9 MR. COOPER: Your Honor, Mr. Cooper, on behalf of  
10 Prince Sultan. I believe that that concludes the defendants'  
11 presentations this morning.

12 THE COURT: All righty. We'll take a five-minute  
13 recess.

14 (Recess)

15 THE COURT: Please be seated. All right. Mr. Motley,  
16 will you be leading off?

17 MR. MOTLEY: May it please the Court. Ron Motley from  
18 Charleston, South Carolina.

19 Your Honor, in this MDL consolidated proceeding, we  
20 believe it's appropriate in this jurisdictional motion that  
21 your Honor resort to pleadings and all of them, the 12(e)s that  
22 have been filed, the affidavits we filed, the letters rogatory  
23 that were issued by Judge Robertson in the Burnett case, which  
24 yielded documents which are placed in the record by that  
25 vehicle, and also, I believe the RICO statements should bear on

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1 these matters.

2 Now, your Honor, with the Court's permission, I will  
3 be addressing the factual basis for two issues before your  
4 Honor, and that is the targeting of the United States by these  
5 defendants as it bears on the issue of jurisdiction, and the  
6 conspiracy and conspiratorial conduct of these defendants and  
7 their coconspirators, as it bears upon jurisdiction. Mr. John  
8 Carter will be addressing your Honor on the Supreme Court and  
9 Second Circuit and other decisions which bear on directed at  
10 the United States, targeting the United States and conspiracy  
11 jurisdiction.

12 We will not be addressing general doing business  
13 jurisdiction, as we thought that we had agreed that the primary  
14 focus would be on the other two, the direction at the United  
15 States.

16 I would like to start, your Honor, that the burden  
17 here is not that of summary judgment, it's a prima facie  
18 showing. I've heard these defendants, and according to them,  
19 nobody in this courtroom has done anything, nobody ought to be  
20 here, not even people whose names are Bin Laden. That then  
21 takes me, your Honor, to September 11.

22 On the morning of September 11, your Honor, New  
23 Yorkers going to business were interrupted by the sound of jets  
24 roaring overhead at very high rates of speed and the horrific  
25 sounds of these jets ramming into the World Trade Center, not

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1 very far from here. Your Honor, everything I'm about to say is  
2 in the record before your Honor, and if the defendants think it  
3 is not, and if they bring it to my attention, I would like to  
4 have the opportunity, your Honor, to respond in writing as to  
5 where it could be found.

6 Initially, your Honor, Al Qaeda was not formed when  
7 Ms. Bernabei claims it was formed. It was formed and  
8 publicized in April of 1988, in a magazine, an Arabic magazine  
9 called Jihad. It was a proclamation by Dr. Azzam. He was a  
10 mentor to Osama Bin Laden. Your Honor, the defendants in their  
11 papers speak at length regarding due process. As I hope we  
12 will demonstrate to you, the jurisprudence in the Second  
13 Circuit that has arisen out of the activities of Al Qaeda is  
14 informative in regard to how much process is due defendants who  
15 target the United States or participate in the targeting of the  
16 United States or participate as coconspirators.

17 Your Honor, it goes without saying that September 11  
18 was not planned in August of 2001. The first hijacking of a  
19 jetliner with the intended consequence of crashing it in a  
20 suicide fashion into a public landmark occurred in December  
21 1994 by affiliates of Al Qaeda when Air France was hijacked,  
22 refuelled in Marseilles with the intention being stated that  
23 they intended to crash it into the Eiffel Tower. The demands  
24 of the hijackers were that a man be released from prison in New  
25 York City. This man is known as Sheik Rahman.

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1 Sheik Rahman, your Honor, if you might recall, was  
2 tried and convicted in this very courthouse or in a Southern  
3 District courthouse, I'm not sure how old this courthouse is,  
4 in the mid-1990s. There were a string of Al Qaeda operatives  
5 who were tried and convicted in this courthouse in the 1990s,  
6 including a man who participated in the destruction or  
7 attempted destruction of the World Trade Center in 1993, and  
8 who actually participated in the planning of what later became  
9 the September 11 hijackings. This was in 1995, it was called  
10 Plan Bojinka.

11 Your Honor, this man, Ramzi Yousef, was convicted in  
12 this courthouse in the 1990s of not hijacking a United States  
13 aircraft, of not murdering a United States citizen, but of  
14 plotting to hijack a Philippines airlines, placing a bomb on  
15 that plane, which exploded, killing a Japanese citizen.  
16 Because of the nature of terrorism and the laws that had been  
17 enacted by our country to prosecute and bring to civil justice  
18 perpetrators of terrorism, the court held that the United  
19 States District Court had extraterritorial right to try  
20 Mr. Yousef in a criminal court of law for this conduct which  
21 occurred in the Philippines and did not involve United States  
22 aircraft or United States citizens.

23 Your Honor, President Bush memorably told the nation  
24 in his first address to us after September 11, he said, among  
25 other things, "If you fund a terrorist, you are a terrorist."

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1           Why did Al Qaeda target the United States? And when  
2 did they target the United States, and how was this known?

3           It's very important to the inquiry here today, your  
4 Honor, Sheik Rahman, whose name I just mentioned, while sitting  
5 in a jail in New York, issued a fatwa, or religious edict, from  
6 his jail cell, in the United States, in 1998. How do we know  
7 this? In this very courthouse, in June of 2001, an Al Qaeda  
8 operative named Ahmed Ressay, under oath, in this courthouse,  
9 in June of 2001, told the jury that he, as an Al Qaeda  
10 operative trained in Afghanistan, at a Bin Laden run camp, saw  
11 and received copies of Sheik Rahman's edict, fatwa, issued from  
12 his jail in New York. And here's what Sheik Rahman said about  
13 targeting the United States:

14           "All Muslims everywhere" -- this is in the record,  
15 your Honor, of the trial to which I referred in June 2001 --  
16 "cut the transportation of their countries, tear it down,  
17 destroy their economy, burn their companies, eliminate their  
18 interests, sink their ships, shoot down their planes, kill them  
19 on the sea, in the air, on the land, kill them when you find  
20 them. Take them and encircle them."

21           Now, your Honor, pretty much everything he just said  
22 happened on September 11, right here in New York City and at  
23 the Pentagon and in an open field in Shanksville, Pennsylvania.  
24 Your Honor, in May of 2001, a defendant in this case whose  
25 motion is not ripe for today, who we claim is a coconspirator,

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1 a person named Sami Al-Hussein, placed on his Web site in May  
2 2001 the following edict or fatwa from yet another Saudi  
3 cleric, to this effect, these words:

4 "The holy warrior must kill himself if he knows that  
5 this will lead to killing a great number of the enemies. This  
6 can be accomplished with the modern means of bringing down an  
7 airplane on an important location that will cause the enemy  
8 great losses."

9 That is four months before 9/11. Is that targeting  
10 the United States? Is that direct? Is that specific? I say  
11 it is, your Honor.

12 Your Honor, in October of 2001, the Congress convened  
13 an inquiry of how September 11 occurred, and among the  
14 witnesses, and this is in the record, your Honor, is the  
15 testimony of the former head of FBI counterterrorism task  
16 force, Mr. Buck Revell, and he traced, your Honor, he traced,  
17 your Honor, the history of Al Qaeda's targeting of the United  
18 States. He listed, under oath in that testimony, 13 pre-9/11  
19 attacks or attempted attacks on United States interests. He  
20 testified that the United States was a principal target of the  
21 terrorist campaign of Al Qaeda. He referred to a speech he  
22 made in 1999 that was published to the same effect. Mr. Revell  
23 said, If 13 attacks on the United States interests is not a  
24 campaign against the United States, then he said I've never  
25 seen one.

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1           Your Honor, in this case, as the D.C. Circuit Court  
2 held in July of this year, it is not the specific bad act that  
3 we're looking at; it's the funding of the bad actor. In this  
4 case, Al Qaeda. Al Qaeda targeted the United States. It was  
5 well known to these defendants. It's well pled in our  
6 allegations, and it implicates the direct targeting of the  
7 United States jurisdiction over these defendants.

8           How else do we know that Al Qaeda targeted the United  
9 States, your Honor? Well, he gave an interview on CNN which  
10 was telecast worldwide in 1997. He says, I declared Jihad or  
11 war against the United States because I, this government, is  
12 unjust, criminal and tyrannical. The American people are not  
13 exonerated from responsibility because they voted for their  
14 corrupt government. In other words, we're targeting U.S.  
15 voters.

16           In 1996, Mr. Bin laden issued his first fatwa, calling  
17 upon Muslims to attack and kill Americans wherever they found  
18 them. In 1998, he declared war, his words, on the United  
19 States and its citizens, the taxpayers of the United States.  
20 Both of these fatwas, your Honor, were translated. They were  
21 made in Arabic. They appeared in Arabic publications, the  
22 largest publication in the Muslim world.

23           In 1998, your Honor, Mr. Bin laden was indicted by the  
24 Southern District of New York U.S. Attorney. He held a press  
25 conference, your Honor, outside of his office, in 1998 when he

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1 announced the indictment of Mr. Bin laden. In the indictment  
2 on Mr. Bin laden, the grand jury, in the indictment, traces the  
3 history of the creation of Al Qaeda. Traces why Al Qaeda  
4 targeted the United States. Describes their loyalty and the  
5 inspiration given to them by Sheik Rahman. Paired together Al  
6 Qaeda with Egyptian terrorist groups refers specifically to the  
7 fatwas that I mentioned.

8 The indictment, your Honor, concludes that Al Qaeda  
9 targeted the United States national defense efforts in 1991.  
10 And paragraph F, your Honor, of that indictment of Mr. Bin  
11 Laden refers specifically to Bin Laden's practice of using  
12 religious, Islamic religious charities to raise and distribute  
13 money for his terror campaign.

14 Your Honor, there's one thing that's not in the  
15 record, and the reason it's not in the record is because it  
16 didn't occur until September the 29th of, less than a month  
17 ago. And I would respectfully, it's testimony of the  
18 undersecretary of the United States Treasury to a congressional  
19 committee, and I would ask for leave of Court for your Honor to  
20 take judicial notice of this. I have copies for the  
21 defendants, but I think it's highly relevant to the issues  
22 before your Honor today. Because it's not a contemporaneous  
23 statement alone, it's a review of things that occurred  
24 historically, because the Department of the Treasury, as your  
25 Honor knows, was empowered with the designation of terrorist

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1 organizations and foreign terrorist organizations. And with  
2 your Honor's permission, I would ask for permission to be  
3 allowed to refer to this and to place it in the record, since  
4 it just occurred three weeks ago.  
5 THE COURT: Who wants to take the lead for the  
6 defendants on this? It's highly unusual, but if it happened  
7 three weeks ago, why didn't you send it to your counsel on the  
8 other side and either get their consent or their opposition?  
9 It is highly unusual, Mr. Motley.  
10 MR. MOTLEY: Then I'll move on, your Honor.  
11 THE COURT: I wouldn't do it, if I were you. But I  
12 anticipate if you did, there's going to be some opposition.  
13 Am I correct? Mr. Cohen?  
14 MR. COHEN: Yes.  
15 THE COURT: You led off for the defendants today. I  
16 take it there would be some opposition, is that correct?  
17 MR. COHEN: Yes, I think so, your Honor. We'd  
18 certainly like a chance to consider it.  
19 THE COURT: Mr. Motley, I think if you wish to add it  
20 subsequently, at least, you know, show it to your opponents and  
21 then we'll consider it.  
22 MR. MOTLEY: I'll move on, your Honor. Thank you.  
23 THE COURT: I think that's wise of you.  
24 MR. MOTLEY: Yes, sir.  
25 Your Honor, I would now like to turn to the 9/11  
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1 Commission report which was cited by the defendants.

2 As I argued to your Honor the last time, the 9/11  
3 Commission report is not binding on your Honor, but I think it  
4 can inform your Honor with respect to its investigative  
5 findings. And in this regard, I think it's important to  
6 understand, your Honor, that the 9/11 Commission has pointed  
7 out that while the specific acts in question, the atrocities of  
8 September 11, were relatively inexpensive, costing somewhere  
9 between four and \$500,000, the infrastructure of Al Qaeda,  
10 which existed from 1988 until and after September 11, cost  
11 upwards of \$30 million per year. And, your Honor, it's the  
12 infrastructure of Al Qaeda today, their cost of doing business,  
13 which is relevant to our inquiry here, not just the cost of the  
14 specific attack on 9/11.

15 As I stated, it came into existence in '88. They  
16 attacked the United States 13 times prior to 9/11, or attempted  
17 to attack the United States, and so this 9/11 plot did not  
18 occur overnight.

19 Judge, as you may have noticed, I usually defer to my  
20 more learned colleagues on matters of law, but, with your  
21 Honor's permission, I'm going to cite to your Honor a case from  
22 1807 of the United States Supreme Court involving the treason  
23 of Aaron Burr and certain of his accomplices. Mr. Chief  
24 Justice John Marshall wrote, "If war be actually levied, all  
25 those who perform any part, however minute, or however remote

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1 from the incident and who are actually engaged in the general  
2 conspiracy, are traitors."

3 In this courthouse, your Honor, a jury convicted  
4 members of Al Qaeda of acts of sedition, a conspiracy, a  
5 seditious conspiracy against the United States, a conspiracy to  
6 attack the infrastructure of the New York area in the  
7 mid-1990s. This is the case of the United States v. Rahman,  
8 the Sheik Rahman, your Honor, which was decided by the Second  
9 Circuit in August of 1999.

10 I will not bore your Honor with citations from the  
11 Second Circuit's unanimous opinion, except that I would point  
12 out specific to the issue of targeting the United States, that  
13 in 1993, in Brooklyn, New York, Sheik Rahman conducted a  
14 seminar on jihad against the United States, within shouting  
15 distance of this courthouse, in Brooklyn, in 1993. And he  
16 called upon the attendees at this meeting to target the United  
17 States and its allies. The Second Circuit did find, your  
18 Honor, that Al Qaeda, in 1999, in its published opinion, was  
19 guilty of a conspiracy to levy war upon the United States.

20 The government introduced evidence of notebooks,  
21 terror cookbooks, if you will, that were found in possession of  
22 the defendants in the New York City area when searches were  
23 conducted in 1993. Your Honor, in April of last year, another  
24 Al Qaeda operative, Ramzi Yousef, was convicted and his  
25 conviction was upheld by the Second Circuit unanimously.

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